

BEFORE

THE PUBLIC SERVICE COMMISSION OF

SOUTH CAROLINA

DOCKET NO. 2003-364-E - ORDER NO. 2004-245

JUNE 30, 2004

IN RE: Petition of Duke Power, A Division of Duke) ORDER APPROVING
Energy Corporation, for Approval of the) PROPERTY TRANSFER
Transfer and Leaseback of Property in South)
Carolina (The Mill Creek Combustion)
Turbine Station).)

This matter comes before the Public Service Commission of South Carolina (the “Commission”) on the Petition of Duke Power, a Division of Duke Energy Corporation (“Duke” or the “Company”), for approval of the transfer and leaseback of certain real property located in Cherokee County within the Duke service area in South Carolina. Duke’s Petition is made pursuant to S.C. Code Ann. Section 58-27-1300 (Supp. 2003).

By its Petition, Duke states that the Property in question is the Mill Creek Combustion Turbine Station (“Mill Creek”). Mill Creek is a 640 MW simple-cycle combustion turbine facility located in Cherokee County which began operations in May, 2003. As a part of a fee in lieu of property tax agreement with Cherokee County, Duke has agreed to transfer legal title of the Mill Creek plant to Cherokee County, and the County will then in turn lease back the plant and property to Duke. Under this agreement, Duke will save approximately \$54.7 million in taxes over the 20 year period of the lease.

Under the terms of the lease agreement, Duke will lease the Mill Creek property for 20 years and make payments to the County of \$25.8 million over this period. Duke will continue to operate Mill Creek as if it were the owner and bear all the costs of operating, maintaining, and repairing the Mill Creek facility. At the end of the 20 year lease, Cherokee County will convey ownership of Mill Creek back to Duke as guaranteed by a mortgage from Cherokee County to Duke.

FINDINGS OF FACT

1. We find that as the transfer at issue in this matter is not a true sale, but a transfer with immediate leaseback and mortgage from the County to Duke, that both the notice and hearing requirements should be, and are, waived.

2. We find that adequate notice of the Petition in this matter was provided to the South Carolina Consumer Advocate.

3. We find the transfer and leaseback to be in the best interests of the public, the regulated utility, and the rate payers of the utility as such will result in substantial tax savings to the regulated utility; for this reason, we find the transfer and leaseback to be in the public interest.

4. We find that although the transfer being approved herein is not a true sale of property that it is a bona fide transaction entered by Cherokee County and Duke and that adequate consideration has been made by both parties.

5. The Commission finds that the accounting treatment proposed by the Company is appropriate. The proposed accounting treatment provides that Mill Creek

will continue to be shown on Duke's books in accordance with the rules and regulations of the Commission.

CONCLUSIONS OF LAW

1. S.C. Code Ann. Section 58-27-1300 (Supp. 2003) entitled "Disposition of properties, powers, franchises or privileges ..." governs the proposed transaction. Section 58-27-1300 requires an electrical utility to obtain approval from the Commission prior to selling, transferring, or leasing utility property, except that utility property with a fair market value of one million dollars or less may be disposed of without prior approval of the Commission.

2. S.C. Code Ann Section 58-27-1300 (Supp. 2003) does not require a hearing on a Petition filed pursuant to Section 58-27-1300 but makes a hearing discretionary.

3. Duke provided notice of this filing with the South Carolina Consumer Advocate in accordance with S.C. Code Ann. Section 58-27-1300.

4. S.C. Code Ann. Section 58-27-1300 (Supp. 2003) provides that a hearing may be held at the Commission's discretion. As stated in the Findings of Fact, the Commission finds that no hearing is necessary in this matter.

5. Based upon the above Findings of Fact, the Commission concludes that Duke has complied with the requirements of S.C. Code Ann. Section 58-27-1300 (Supp. 2003) and that the requested transfer and leaseback of the Mill Creek Property should be approved. Accordingly, the Commission approves the requested transfer.

